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No. 07-1318

In the Supreme Court of the United States

HAMILTON COUNTY PUBLIC DEFENDER COMMISSION, OFFICE OF THE HAMILTON COUNTY PUBLIC DEFENDER, AND HAMILTON COUNTY, OHIO,

Petitioners,

v.

MICHAEL POWERS,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the court below was correct in holding that the favorable termination rule of *Heck* v. *Humphrey*, 512 U.S. 477 (1994), does not apply to a suit where a plaintiff challenges only the procedure that led to incarceration, not the incarceration itself, in accord with this Court's holding in *Wilkinson* v. *Dotson*, 544 U.S. 74 (2005)?

2. If *Heck* does apply to this suit, whether the favorable termination rule applies to respondent, who was detained for only one day and, as a consequence, was foreclosed from challenging the procedure that led to his incarceration through either direct appeal or collateral review?

3. Whether the court of appeals properly construed the record to find that a public defender, who failed to request an indigency hearing for respondent, was a proximate cause of respondent's injuries?

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STATEMENT

Respondent's probation was revoked after he failed to pay a court-ordered fine. During the hearing that resulted in the revocation of his probation, respondent was represented by a public defender employed by petitioners. The public defender failed to request an indigency hearing despite evidence that respondent may have been indigent. Respondent was subsequently imprisoned.

After his release, respondent filed this class-action lawsuit alleging the petitioners had a policy or custom of failing to request indigency hearings. Petitioners sought to dismiss the suit pursuant to the "favorable termination" requirement of *Heck* v. *Humphrey*, 512 U.S. 477 (1994). The Sixth Circuit rejected this argument on two independent grounds. The court held that because respondent challenged the *procedure* that led to his incarceration rather than the incarceration itself, the suit did not implicate *Heck*. Additionally, the court held that *Heck* does not apply when an individual's period of incarceration is too brief to allow for a favorable termination by means of habeas. The Sixth Circuit also rejected petitioners' motion for summary judgment, finding that the public defender's failure to request an indigency hearing was both a cause-in-fact and proximate cause of respondent's incarceration. The court of appeals, however, reversed the district court's grant of summary judgment for respondent, remanding the case for further factual proceedings to determine whether petitioners actually had a policy or custom of failing to seek indigency hearings.

None of the three questions presented by petitioners warrants review. Petitioners' first two questions relate to the court of appeals' alternative hold-

ings regarding *Heck*'s favorable termination requirement. Because these each are independent and sufficient grounds for affirming the lower court's ruling, the Court cannot consider one without addressing the other. The second of these questions—whether *Heck* is implicated by a challenge that alleges violations of procedural rights but itself could not call into question the validity of the plaintiff's incarceration—is plainly not worthy of certiorari. Petitioners have identified no conflict in the lower courts on the question. Nor have they demonstrated that this is a frequently recurring issue warranting this Court's attention. Indeed, although the only basis for review would be mere error correction, petitioners have not even made a persuasive argument that this holding was incorrect. Because this alternative holding requires affirming the lower court *regardless* of whether *Heck* creates a favorable termination bar when a claimant has no possibility of habeas relief, this case is not a proper vehicle for addressing that issue.

Petitioners' third question—relating to the lower court's proximate causation finding—likewise does not merit review by this Court. Petitioners again have not alleged that there is disagreement in the lower courts on this issue. Rather, petitioners again seek mere error correction, here of the lower court's review of the factual record. In fact, the Sixth Circuit's holding was correct. The petition, which seeks review of a nonfinal judgment, should be denied.

1. Respondent's Incarceration. In January 2002, respondent pleaded no contest in Hamilton County, Ohio municipal court to a charge of reckless operation of a motor vehicle, a fourth-degree misdemeanor. Pet. App. 3a. He was sentenced to thirty

days of incarceration, but the court suspended twenty-seven days of the sentence and ordered respondent to serve the remaining three days in a driver-intervention program. The court also ordered respondent to pay a fine of $250 and court costs. *Ibid.*

Two months later, respondent was arrested for violating his probation because he failed to pay the court-ordered fine. Pet. App. 3a. At the hearing to revoke his probation, respondent was represented by a public defender employed by petitioners. The public defender did not request, and the court accordingly did not provide, a hearing to determine whether respondent's failure to pay the fine was a result of indigency. *Ibid.* Indeed, "there is no dispute that the Public Defender did not present the municipal judge with any information about [respondent's] financial status." *Id.* at 34a. The court terminated respondent's probation and restored the original sentence of incarceration. Respondent was subsequently imprisoned in Hamilton County Jail for failure to pay his fine. *Id.* at 89a.

After his incarceration, a private attorney filed a motion to mitigate. Respondent was released after a brief period of imprisonment and his case was terminated without restoration of probation. Pet. App. 89a.

2. District Court Proceedings. In August 2002, respondent filed a class-action complaint alleging that his constitutional rights—and the rights of others similarly situated—had been violated by the public defender's failure to request an indigency hearing. Pet. App. 4a. Respondent sought damages under 42 U.S.C. § 1983. He sued petitioners, among others, alleging that they maintained a policy or cus-

tom of failing to request indigency hearings. *Id.* at 3a-4a.

The district court granted in part and denied in part petitioners' motion for summary judgment. Pet. App. 87a-118a. First, the court rejected petitioners' argument that the suit was barred by *Heck* v. *Humphrey*, 512 U.S. 477. Pet. App. 94a-96a. The court found that respondent is "seeking Section 1983 damages because of a defect in procedure, his denial of an indigency hearing, not a faulty conclusion." *Id.* at 96a. Because the court found that a "favorable outcome" for respondent "would not necessarily imply the invalidity of his incarceration," the court concluded that "*Heck* is not applicable to this action * * *."

The court also held that the petitioners had a policy or custom of failing to request indigency hearings and that they had "a duty to represent [respondent] on the issue of indigency before his incarceration for failure to pay fines or costs." Pet. App. 99a-100a, 104a. But the court found that other defendants were not liable for the activities of the public defenders and granted summary judgment in their favor. *Id.* at 100a-102a. In the same opinion, the district court granted respondent's motion for class certification. *Id.* at 107a-17a.[1]

Later, the district court granted respondent's motion for summary judgment on liability, finding the class entitled to relief. Pet. App. 66a-86a. Reviewing the evidence in the record, the court found

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[1] The district court made additional findings not at issue in this petition. These included a rejection of petitioners' theory that they were not state actors (Pet. App. 105a-06a) and petitioners' invocation of abstention doctrines (*id.* at 106a-07a).

that "[t]here is no question * * * that indigent defendants represented by [petitioners] were jailed on fines that they were unable to pay." *Id.* at 83a. The court concluded that "[t]he practice in Hamilton County of jailing on fines without an indigency inquiry appears to have become so endemic that the entire system considered it normal." *Ibid.*[2]

3. Proceedings in the Court of Appeals. The court of appeals affirmed in part. Pet. App. 1a-55a. The court agreed with the district court that because respondent "alleges that his constitutional rights were violated as a result of improper procedures, not that his underlying conviction or jail sentence was improper," *Heck* is not applicable to this suit. Pet. App. 17a. Alternatively, the court also opined that the suit was not barred by *Heck* because "there is no way [respondent] could have obtained habeas review of his incarceration." *Id.* at 16a. Arguing that "the favorable-termination requirement [can] not be deployed to foreclose federal review of asserted deprivations of federal rights by habeas-ineligible plaintiffs," the court concluded that *Heck*'s "favorable-termination requirement poses no impediment to Powers's [Section] 1983 claim." *Id.* at 16a-17a.

Additionally, the Sixth Circuit examined the factual record and held that the failure of the public defender to request an indigency hearing was both a

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[2] In granting summary judgment for the class, the district court awarded damages in an amount of $100 for each day that a class member was imprisoned. Pet. App. 57a-58a. Although the record does not clearly identify the basis for the trial court's calculation of damages, petitioners here do not raise any question relating to the measure of damages.

cause-in-fact and proximate cause of respondent's injuries. With respect to cause-in-fact, the court determined that "'but for' the Public Defender's failure to move for an indigency hearing, [respondent] would have received a hearing." *Id.* at 29a. The court likewise ruled that the public defender's inaction was a proximate cause of respondent's incarceration. "[T]he Public Defender's silence about his asserted indigency made it reasonably foreseeable that he would be jailed for non-payment of his fine without having received an indigency hearing" *Id.* at 31a. The court determined that "the Public Defender left the municipal judge with the misleading impression that [respondent's] financial circumstances did not need to be investigated prior to incarcerating him on the unpaid fine." *Id.* at 34a.[3]

Nevertheless, the court of appeals reversed the district court's grant of summary judgment for respondent and remanded for further factual findings regarding whether petitioners had an established policy or custom of failing to request indigency hearings. Pet. App. 39a-48a. Upon reviewing the record, the court concluded that there was "a genuine issue of material fact [as] to the existence of the purported policy or custom of failing to seek indigency hearings." *Id.* at 47a. The court remanded for "further factual development." *Id.* at 48a.

Judge Norris dissented. Although he "agree[d] with much of the majority's opinion" (Pet. App. 53a), Judge Norris did not interpret the record as support-

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[3] The Sixth Circuit rejected additional arguments not at issue here, including petitioners' renewed invocations of abstention doctrines (Pet. App. 21a-23a) and challenges to the class certification (*id.* at 48a-53a).

ing the conclusion that the public defender proximately caused respondent's injuries (*id.* at 57a).

The court of appeals denied the petition for en banc rehearing without dissent. Pet. App. 118a-19a.

REASONS FOR DENYING THE PETITION

The three questions presented by petitioners do not warrant this Court's review. First, the courts below properly determined that this suit does not implicate *Heck* because respondent challenged the procedure by which he was incarcerated, not the fact of incarceration itself. Because there is no conflict in the lower courts on this issue (which does not arise with any frequency) and because this holding is correct, review is unnecessary. Second, this alternative holding renders the case an inappropriate vehicle to consider whether a habeas-ineligible claimant is excepted from *Heck*'s favorable termination rule. Finally, the lower court's holding on proximate causation is a fact-bound interpretation of the record. Petitioners identify no dispute in the lower courts on a question of law relating to this point. Rather, they seek to have this Court reconsider factual findings, an issue not warranting certiorari review. Moreover, as this case has been remanded for further factual development, the record would not support consideration of the question by the Court at this time. The petition should be denied.

A. This Suit Does Not Implicate *Heck*.

As an initial matter, review is not warranted because this case does not implicate the favorable termination requirement of *Heck* v. *Humphrey*, 512 U.S. 477 (1994). In rejecting petitioners' *Heck* argument, the district court rested *solely* on its conclusion that because respondent complained about "a defect in

procedure" rather than "a faulty conclusion," success on his suit would "not necessarily imply the invalidity of his incarceration." Pet. App. 96a. The court therefore found that "*Heck* is not applicable to this action." *Ibid.* The court of appeals agreed, concluding that "because [respondent] challenges the procedures that led to his incarceration and not the incarceration itself, [respondent] need not comply with the favorable-termination requirement." *Id.* at 21a. This issue, which asks whether *Heck*'s favorable-termination rule could have any application to this suit *whatsoever*, is a question that should logically be decided prior to examining whether the case falls within a *Heck* exception.

And review of this issue is not warranted. Petitioners have identified no disagreement in the lower courts that demands resolution. Moreover, there is no indication that this issue arises with any frequency. When it does arise, the distinction between challenges to incarceration itself and challenges to the procedure leading to incarceration is often fact-bound. Finally, review is not appropriate because the court of appeals correctly applied this Court's precedent. Because this is an independent and sufficient ground for the result below, further review is not warranted.

1. Petitioners fail to present any compelling reason why this Court should review the holding below that *Heck* does not bar suits challenging only the procedure leading to incarceration, rather than the validity of the incarceration itself. Petitioners do not assert that there is a conflict in the lower courts on this question. See Pet. 18-22. In fact, petitioners fail to cite *any* case from the lower courts that would

demonstrate an uncertainty in prevailing law requiring this Court's attention. *Ibid.*

The sparse treatment of this issue in the lower courts is unsurprising on two counts. First, the leading case on this question, *Wilkinson* v. *Dotson*, 544 U.S. 74 (2005), was decided just three years ago. The courts of appeals have had scant opportunity to apply *Wilkinson*'s teachings. Because the courts have had limited opportunity to confront the various factual circumstances in which *Wilkinson* may apply, any review here would be premature.[4]

Second, petitioners' inability to present lower court opinions on this issue demonstrates that the question simply lacks significance. The intersection of *Wilkinson* and *Heck*, on one hand, and *Bearden* v. *Georgia*, 461 U.S. 660 (1983)—this Court's leading precedent regarding indigency hearings—on the other, is an area of law that rarely arises. Review is particularly unnecessary where no other courts of appeals have considered the issue here, much less decided the question in a manner contrary to the court below. Should such a conflict arise in the fu-

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[4] Members of the Court have often noted that it is "desirable to have different aspects of an issue further illumined by the lower courts. Wise adjudication has its own time for ripening." *Maryland* v. *Baltimore Radio Show*, 338 U.S. 912, 918 (1950) (Frankfurter, J., respecting denial of certiorari). Allowing the lower courts "'to serve as laboratories in which the issue receives further study before it is addressed by this Court'" will increase "the likelihood that the issue will be resolved correctly." *Brown* v. *Texas*, 522 U.S. 940 (1997) (Stevens, J., respecting denial of certiorari, joined by Souter, Ginsberg, and Breyer, JJ.) (quoting *McCray* v. *New York*, 461 U.S. 961, 963 (1983) (Stevens, J., respecting denial of certiorari, joined by Blackmun and Powell, JJ.)).

ture, the Court would have opportunity to address it at that time.

2. The holding that *Heck* is inapplicable to this suit also does not merit review because this question is inherently fact-bound. *Wilkinson*'s distinction between procedural challenges that do not implicate *Heck*, and those that do, turns on whether a "favorable judgment will * * * necessarily imply the invalidity of * * * convictions or sentences." *Wilkinson*, 544 U.S. at 82 (quotations omitted). This focus on the potential *effect* of a Section 1983 suit requires an analysis of the procedural ramifications that may be specific to a particular state law or a particular inmate's circumstances. These are the fact-intensive decisions that *Wilkinson* properly left to the lower courts. Petitioners present no generalized question of law for this Court to decide.

Rather, petitioners' argument here takes issue with factual determinations made by the courts below. This proves both that applications of *Wilkinson* are inherently fact specific and that petitioners' argument is a thinly veiled attempt to alter the record. In arguing that respondent's claim "challeng[ed] his incarceration" directly (Pet. 20), petitioners attempt to construe the record in a manner already foreclosed by the lower courts. The court of appeals determined that respondent "allege[d] that his constitutional rights were violated as a result of improper procedures, not that his underlying conviction or jail sentence was improper." Pet. App. 17a. The district court concluded the same, finding that respondent "is seeking Section 1983 damages because of a defect in procedure, his denial of an indigency hearing, not a faulty conclusion." *Id.* at 96a. Petitioners' true quarrel lies with the lower courts' factual findings.

But this Court is not the appropriate forum to reconstruct the record.

3. Moreover, review of this issue is not warranted because the court of appeals' decision was correct. In *Wilkinson*, 544 U.S. at 78, the Court considered Section 1983 claims brought by prisoners who challenged the procedures relating to parole-eligibility and parole-suitability hearings. This Court held the suit was permissible under Section 1983 because the claimants challenged "state procedures" relating to incarceration, but did not seek "an injunction ordering * * * immediate or speedier release into the community." *Id.* at 82. Moreover, "a favorable judgment [would] not 'necessarily imply the invalidity of their convictions or sentences.'" *Ibid.* (citing *Heck*, 512 U.S. at 487) (alterations omitted). Thus, if a plaintiff "were to seek damages for using the wrong procedures, not for reaching the wrong result, and if that procedural defect did not necessarily imply the invalidity of the revocation, then *Heck* would have no application at all." *Spencer* v. *Kemna*, 523 U.S. 1, 17 (1998) (citations and quotations omitted). That is precisely the case here.

Wilkinson and *Spencer*, therefore, make plain that this suit does not implicate *Heck*. Had respondent been incarcerated at the time of the suit, success on his claim would not have meant "immediate release from confinement or a shorter stay in prison * * *." *Wilkinson*, 544 U.S. at 82. Precisely like the claimant in *Wilkinson*, a successful suit would, at most, imply a need to "speed *consideration*" of his indigency hearing (*ibid.*); it would not have resulted in his release from prison.

In arguing that the injury suffered by respondent "is not * * * the want of a hearing, but rather the jail

sentence he received" (Pet. 20), petitioners ignore a fundamental teaching of *Bearden*. A *Bearden* challenge to incarceration entitles a prisoner only to a *hearing* regarding his or her indigency status. Indeed, in *Bearden* itself, the remedy this Court provided the prisoner was not an invalidation of his incarceration, but rather a remand to determine whether he made "sufficient bona fide efforts to pay his fine." *Id.* at 674. Only if the state failed to provide Bearden such a hearing, or the hearing led to a determination that Bearden was actually indigent, would his incarceration be declared invalid. And this principle of *Bearden* has been employed routinely by the state courts. When appellate courts find that a trial court erred by failing to provide an indigency hearing, the remedy is a remand for the trial court to conduct that hearing, not immediate release from custody. See, *e.g.*, *Gaither* v. *Inman*, 322 S.E.2d 242, 243 (Ga. 1984); *State* v. *Davis*, 544 So. 2d 20, 21-22 (La. App. 1989); *MacPheat* v. *Mahoney*, 997 P.2d 753, 758 (Mont. 2000); *State* v. *Dye*, 715 S.W.2d 36, 41 (Tenn. 1986).[5]

Petitioners' misunderstanding of *Bearden* explains their improper reliance on *Edwards* v. *Balisok*, 520 U.S. 641 (1997). See Pet. 21. In *Edwards*, the prisoner claimed that a prison disciplinary pro-

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[5] The same is true for violations of Ohio Rev. Code Ann. § 2947.14, the Ohio statute that provides for indigency hearings prior to incarceration for failure to pay a fine. In *State* v. *Perkins*, 798 N.E.2d 646, 650 (Ohio Ct. App. 2003), the court found that defendant's rights under Section 2947.14 had been violated. Rather than vacating the fine, the court remanded the case to the trial court "to comply with the mandates" of the statute. *Ibid.* Success on the claim entitled the claimant only to a hearing.

ceeding denied him due process and that "[t]he principal procedural defect * * * would, if established, necessarily imply the invalidity of the deprivation of his good-time credits." *Id.* at 646. In rejecting his claim, the Court concluded that the plaintiff was barred from presenting an "obvious procedural defect" that, if demonstrated, would automatically lead a court to "reinstate[] good-time credits (*absent a new hearing*) when it is established." *Id.* at 647 (emphasis added). Because success on the suit was sufficient to shorten the length of the prisoner's sentence and no additional hearing was needed, this Court found it barred by *Heck*.

But *Edwards* is clearly inapposite to this case. Like the challenge to parole procedures in *Wilkinson*, respondent's challenge—if brought while he was still imprisoned—could not have automatically led to his release from jail or decreased the length of his sentence. It would merely have established that a court should have conducted a fact-finding hearing regarding his alleged indigency. See Pet. App. 19a ("[I]f [respondent] succeeds in his [Section] 1983 suit, that means only that the failure to grant [respondent] an indigency hearing was wrongful, not that the order committing him to jail was wrongful."). Accordingly, the decision by the courts below that *Heck* is not implicated by this suit is correct. Review is not warranted.

B. This Is Not An Appropriate Vehicle To Consider *Heck's* Favorable Termination Requirement For Habeas-Ineligible Claimants.

The court of appeals also provided an alternative reason why the suit is not barred by *Heck*. The court held that "*Heck*'s favorable-termination requirement

cannot be imposed against [Section] 1983 plaintiffs who lack a habeas option for the vindication of their federal rights." Pet. App. 15a-16a. Because respondent was "imprisoned for at least one, but not more than thirty, days for his failure to pay the fine[,] * * * there is no way that [respondent] could have obtained habeas review of his incarceration." *Id.* at 16a. Petitioners now assert that the circuits have divided on the question whether plaintiffs who are not eligible for habeas relief are barred by *Heck* from advancing suit under Section 1983. Pet. 10-18. But review of this question is unwarranted for several reasons: the Sixth Circuit's alternative procedural holding makes resolution of this question superfluous; the cases cited by petitioners as establishing a conflict are distinguishable on their facts; and the holding below is correct.

1. Resolution of this question is unnecessary in this case. In finding that *Heck* does not bar this suit, the district court never even considered the habeas-ineligibility argument; it relied solely on the nature of the suit as a challenge to the procedure by which respondent was incarcerated. Pet. App. 94a-96a. The court of appeals made plain that these two reasons that *Heck*'s favorable-termination requirement do not apply to the suit are independent and sufficient. See *id.* at 17a (holding that respondent was exempt from *Heck* for "a second reason."). Reviewing the aspect of the decision below addressing the habeas-ineligibility exception to *Heck*, therefore, would have no impact on the ultimate resolution of this case.[6]

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[6] In addition, this case raises the *Heck* issue in a unique procedural posture; so far as we are aware, it is the only case to have

2. Moreover, the allegedly conflicting cases are largely distinguishable on their facts. Although the court of appeals cited these cases and noted that it "disagree[d] with the reasoning" of those courts (Pet. App. 15a), a careful examination of the factual situations reveals that the court below might well have reached the same conclusion as did the assertedly conflicting courts had it been presented with the facts that were before them. That is because in each of these cases the plaintiffs either pursued federal habeas and lost, failed to pursue habeas in good faith, or voluntarily waived the right of habeas in exchange for some particular benefit. In fact, the court below noted the limited nature of its holding on the *Heck* exception. Pet. App. 12a-13a ("[A] [Section] 1983 plaintiff is entitled to a *Heck* exception if the plaintiff was precluded 'as a matter of law' from seeking habeas redress, but not entitled to such an exception if the plaintiff could have sought and obtained habeas review while still in prison but failed to do so." (citing *Guerrero* v. *Gates*, 442 F.3d 697, 705 (9th Cir. 2006))). Therefore, the division of authority cited by petitioners is more illusory than real.

For example, in *Figueroa* v. *Rivera*, 147 F.3d 77, 79 (1st Cir. 1998), the plaintiffs were incarcerated in prison for many years, providing sufficient time to file a habeas action. In fact, the plaintiffs *had* filed habeas suits that *failed* in the district court. *Ibid.* Plaintiffs were not legally or practically foreclosed from seeking habeas, they simply were denied habeas relief. Their Section 1983 suit would similarly be barred in the Sixth Circuit.

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presented the favorable-termination requirement in the context of a class action.

In *Gilles* v. *Davis*, 427 F.3d 197, 208-09 (3d Cir. 2005), the *Heck*-barred plaintiff had entered Pennsylvania's Accelerated Rehabilitation Disposition program. The court found that the "program is a court-supervised compromise" that imposes "several burdens upon the criminal defendant." *Id.* at 211. By entering this program and striking a bargain with the prosecutor, the plaintiff voluntarily relinquished federal habeas review. Again, the court below would likely find that a claimant who voluntarily waived his or her habeas rights in exchange for a benefit is *Heck*-barred.

Randell v. *Johnson*, 227 F.3d 300 (5th Cir. 2000), also presents inapposite facts. There, the claimant had been incarcerated for approximately nine months. *Id.* at 300. There is no indication that he initiated any direct appeal or collateral challenge to his confinement during this period. While nine months may have been too short a period of time to resolve a claim, it was sufficient time to file an appeal or petition. The court below might well find that such a failure to seek favorable termination while incarcerated forecloses a claimant from a *Heck* exception.

The plaintiff in *Entzi* v. *Redmann*, 485 F.3d 998 (8th Cir. 2007), also was incarcerated for a substantial period of time. He brought federal habeas claims that were rejected. *Id.* at 1000. While it is unclear from the opinion whether his *Heck*-barred claims were also presented in the habeas petition, the court below would likely reject Entzi's claims regardless. Either a failure to achieve a favorable termination or a lack of good faith efforts to secure favorable termination while incarcerated would end Entzi's claim in the Sixth Circuit.

3. Finally, review of this case is not necessary because the lower court's opinion is correct. When this Court established the favorable-termination requirement in *Heck*, it presumed that claimants would have the ability in the first instance to bring a habeas action to vacate a sentence or judgment. *Heck*, 512 U.S. at 486-87 ("[I]n order to recover damages for allegedly unconstitutional conviction or imprisonment, * * * a [Section] 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal * * *, or called into question by a federal court's issuance of a writ of habeas corpus."). In *Heck*, the court did not confront, and consequently did not consider, a situation where an individual was legally or practically precluded from pursuing a federal habeas action. The case, therefore, is best understood as not applying to such habeas-ineligible individuals. Justice Souter specifically noted that this is "a sensible way to read the opinion." *Id.* at 500-01 (Souter, J., concurring).

In *Spencer* v. *Kemna*, 523 U.S. 1 (1998), five members of the Court confirmed that *Heck*'s favorable termination rule does not apply to habeas-ineligible plaintiffs. Concurring for himself and Justices O'Connor, Ginsburg, and Breyer, Justice Souter wrote that "a former prisoner, no longer 'in custody' may bring a [Section 1983] action establishing the unconstitutionality of a conviction of confinement without being bound to satisfy a favorable-termination requirement that it would be impossible as a matter of law for him to satisfy." *Id.* at 21 (Souter, J., concurring). In dissent, Justice Stevens also agreed that a claimant without a habeas remedy "may bring an action under [Section 1983]." *Id.* at 25 n.8 (Stevens, J., dissenting).

Here, because respondent's incarceration lasted only one day, he did not have access to direct appeal or federal habeas to review the legality of the procedures leading to his incarceration. Pet. App. 12a. Because the lower court has correctly interpreted this Court's precedent, there is no need to review the issue.

C. The Proximate Causation Finding Does Not Warrant Review.

Petitioners' final question similarly does not merit review. Petitioners challenge the court of appeals' conclusion that the "Public Defender may be held liable as the proximate cause of [respondent's] injury." Pet. App. 34a-35a. But petitioners have identified no conflict in the lower courts justifying certiorari. Nor do petitioners present a generally applicable rule of law they ask this Court to decide. Rather, petitioners again seek correction of what they perceive to be factual errors made by the lower court in construing the record. But review by this Court of such a contention plainly is not warranted, particularly in a case that has been remanded for further factual development.

1. Petitioners fail to provide any plausible reason why this Court should review this factual question. In framing the issue, petitioners contrast the interpretations of the record made by the majority and dissenting opinions below. Pet. 22-23. But as the majority noted, questions of proximate causation are inherently a "line-drawing exercise" that turn on the factual findings. Pet. App. 29a. There is no need to examine such a question.

In fact, the ruling here turned on disputed questions of fact. While the petitioners may find it "hard

to fathom" how the public defender's failure to request an indigency hearing led to respondent's injuries (Pet. 24), the court of appeals plainly disagreed, finding that the record established that it was "reasonably foreseeable that [respondent] would be jailed for non-payment of his fine" because of the public defender's shortcomings. Pet. App. 31a. This is a fact-bound judgment closely tied to the record. In examining whether the judge's actions "sever[ed] the chain of causation," the court below compared the record here to the factual findings of other courts addressing related questions. *Id.* at 31a-32a. Even the dissent confirmed the context-specific nature of this inquiry, stating that it found "nothing *in this record*" supporting the proximate cause conclusion. Pet. App. 55a (emphasis added).

Indeed, while the dissent disputes the majority's ultimate conclusion, the majority and dissent *agree* as to the proper legal standard to apply. Compare Pet. App. 32a ("To determine whether a judicial act constitutes a superseding cause that relieves a defendant of liability, our sister circuits have distinguished between judicial orders that are predicated on the misrepresentation or omission of material facts, on the one hand and, on the other hand, judicial orders that are made after a full presentation of the facts, but are nonetheless legally erroneous.") with *id.* at 55a (Norris, J., dissenting) ("In cases of outright misrepresentation by defense counsel, I agree with the majority that an erroneous ruling on the part of the court would not serve as a superseding cause."). The portion of the dissent upon which petitioners base their argument (Pet. 22-23) simply disagrees with the majority's application of this standard to the facts of this case. *Id.* at 55a.

Petitioners' request for error correction is particularly inappropriate where, as here, there is no final judgment. The Sixth Circuit remanded the case specifically for "further factual development." Pet. App. 48a. To the extent that petitioners insist errors remain in the lower court's construction of the record, they will have ample opportunity to raise those issues before the lower courts with the benefit of additional discovery. But certiorari should not be granted to allow petitioners to press those challenges before this Court.

2. Moreover, certiorari is not warranted because the Sixth Circuit was correct to find that the failure of the public defender to request an indigency hearing was a proximate cause of respondent's injury. Pet. App. 29a-35a. To determine whether a trial court's legal error is a superseding cause, the court held that a legally erroneous judicial order would break the chain of causation unless the judge issuing the order had been misled by the parties. *Id.* at 32a.

The court below found that the municipal judge *had* been misled by the public defender. It determined that "the Public Defender left the municipal judge with the misleading impression that [respondent's] financial circumstances did not need to be investigated prior to incarcerating him on the unpaid fine." Pet. App. 34a. This was because "the municipal judge did not have an independent duty to unearth facts establishing whether [respondent] was indeed indigent." *Ibid.* Rather, the public defender had a "duty to marshal the facts establishing [respondent's] indigency * * * and bring them to the attention of the municipal court." *Ibid.* "[C]ourts do not typically issue rulings on matters not brought to their attention by the parties * * *." *Id.* at 31a.

Petitioners' arguments to the contrary are unavailing. Whether a judge has a duty to hold a hearing, the argument upon which petitioners rely (Pet. 23-24), simply is not relevant to the proximate cause theory advanced by respondent. Rather, because the court below found that the trial judge was *misled* by the public defender as to the need for an indigency hearing, the actions of the trial court did not break the chain of causation.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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